

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

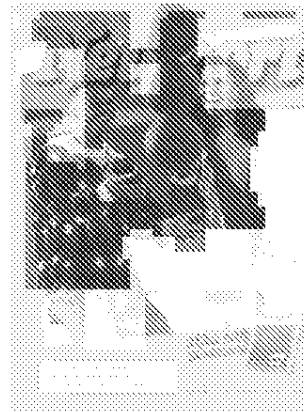
UNITED STATES OF AMERICA,	)	
	)	
	)	
Plaintiff,	)	
	)	Civil No. 99-CV-02496 (GK)
v.	)	
PHILIP MORRIS USA, INC.,	)	REDACTED FOR PUBLIC FILING
f/k/a PHILIP MORRIS INC., et al.,	)	
	)	
Defendants.	)	

---

DEFENDANTS' WRITTEN DIRECT EXAMINATION OF  
VICTOR LINDSLEY

SUBMITTED PURSUANT TO ORDER #471

[Part 2 of 3]



JDEM 020170

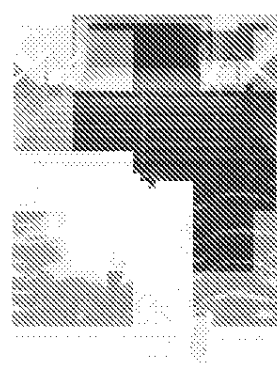
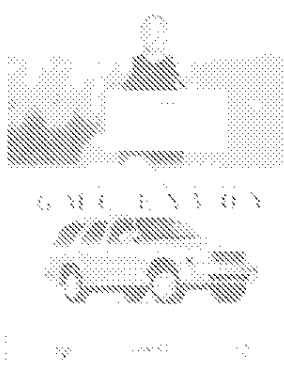
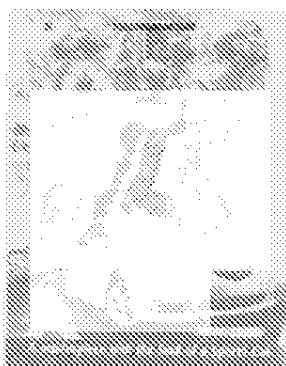
1

2 Q: Is it unusual for ads for adult products to show people engaged in sports?

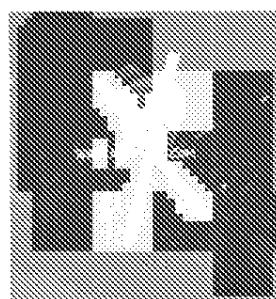
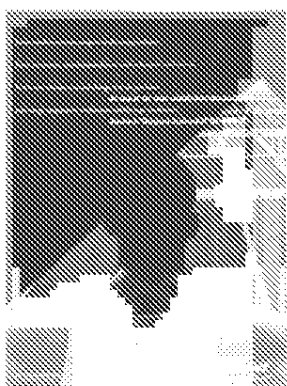
3 A: Not in my experience.

4 Q: Would you describe the ads below and on the next page, JDEM-020171?

5 A: Those ads show competitive athletics, such as an ad for GMC Envoy with a sprinter, and  
 6 an ad for T-Mobile with a competitive skier. These ads provide a clear contrast with ours and,  
 7 frankly, give you an idea of what our ads might look like if we did violate the Code.



8



JDEM-020171

1  
2 Q: Mr. Lindsley, also on the subject of sports, Dr. Biglan asserted that a 1987 baseball  
3 hat promotion “communicated that smoking Newport goes with playing baseball.” (Biglan,  
4 written direct 228:1-7.)

5 Did you intend this hat giveaway to make that communication?

6 A: No. Many companies distribute baseball hats. They do so because people like wearing  
7 baseball hats, not to communicate that their products “go with playing baseball.” We weren’t  
8 doing that either. We used branded promotions with baseball hats, along with other “wearables”  
9 like t-shirts and socks, to retain the loyalty of our franchise consumers and to try to attract  
10 competitive smokers. It was a reflection of the lifestyle of our target consumers, not a message  
11 about a characteristic of our product.

12 Q: Who could participate in these promotions?

13 A: Adult smokers.

14 Q: Do you still have promotions like these?

15 A: No. Since the MSA, we no longer distribute any branded premium items.

16 (b) The “Newport Pleasure” theme

17 Q: Dr. Biglan stated that, in his opinion, “Lorillard has consistently associated smoking  
18 Newport with themes and images that are important to adolescents ....” (Biglan written

1 direct, 209:9-10.) He listed the following themes: Popularity and social acceptance, fun  
2 and excitement, athleticism and relaxation. He stated: “Lorillard successfully  
3 communicates to adolescents that they can achieve the social success most teenagers greatly  
4 desire and that they can have fun—even pleasure—by becoming Newport smokers. They  
5 can also view themselves as happy, healthy, and athletically talented people—and other  
6 teenagers who see these advertisements will view them the same way.” (Biglan written  
7 direct, 232:15-20.)

8 Does that testimony accurately describe what you are trying to communicate with  
9 Lorillard’s advertising?

10 A: No.

11 Q: Why not?

12 A: We do not communicate Newport’s themes to adolescents. Newport advertising is for  
13 adult smokers, pure and simple. The concepts that Dr. Biglan identified of popularity, social  
14 acceptance, fun, excitement, athleticism and relaxation are basic human desires for people of  
15 almost all ages. The situations in which we show them are oriented to our core demographic, 21-  
16 34 years old, and are executed within the guidelines we follow. During my 24 years with  
17 Lorillard, I do not recall reviewing any market research in which any adult smoker said that an  
18 activity we portrayed in an ad was inappropriate to the lifestyle of people his or her age.

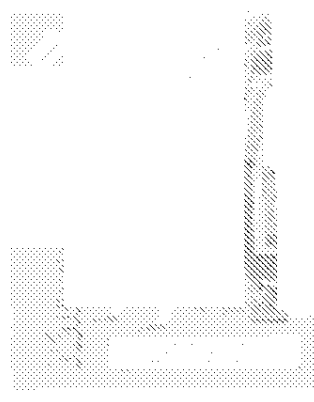
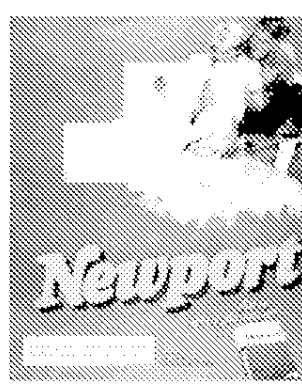
19 Q: What is Newport’s overall strategy with its ads?

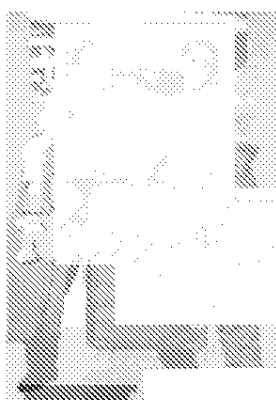
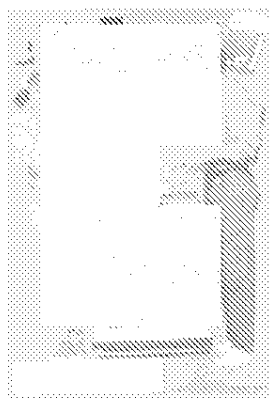
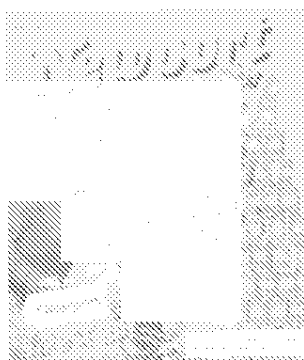
20 A: Our campaign is lifestyle-based. Newport’s creative strategy is to communicate relevant  
21 lifestyle activities to the adult smoker. We do this through adult images of fun, camaraderie, and  
22 socialization. The general theme of this campaign is that adults can have fun with “Newport

1   Pleasure.” Newport Pleasure is a reflection of the product’s taste and the lifestyle of our  
2   consumer group.

3   Q:     Let me ask you about certain groups of ads since you have been with the company.  
4   Would you describe the ads that have been copied below and on the next page in JDEM-  
5   020172?

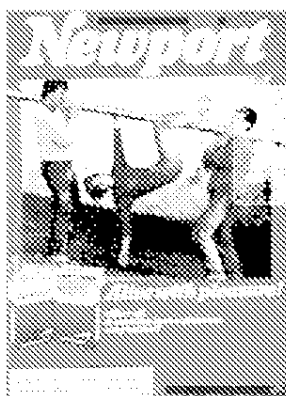
6   A:     Those are ads that each depict a man and woman enjoying everyday activities but with a  
7   twist – washing a pair of tennis shoes in the dishwasher, painting themselves into a corner,  
8   moving a doghouse with the dog still in it, and the like.





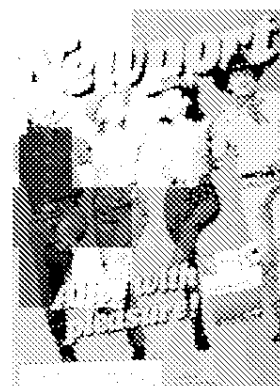
JDEM-020172

- 1
- 2 Now showing you JDEM-020173, which has been copied below, can you describe those ads?
- 3 A: These are other examples of Newport ads. They show groups of men and women, out of
- 4 the home, enjoying each other and the activities they are engaged in.



5

1



2





JDEM-020172

1

2 Q: Are the Newport ads an unusual approach for an adult product?

3 A: No. Many products use lifestyle marketing.

4 Q: I would now like to ask you about a few documents mentioned by Dr. Biglan.

5 (Biglan written direct, 221:14-223:3.) To support his claim that you use “fun and

6 excitement” to appeal to adolescents, he cited four documents. First, let me ask you about

7 three of them, U.S. Ex. 55,927, 67,673 and 74,423. Would you identify them?

8 A: U.S. Ex. 55,927 and 74,423 are focus group reports dated October 1981 and January

9 1994 respectively. U.S. Ex. 67,673 is a research study from September 1988.

10 Q: Do any of these reports mention adolescents?



1 A: No. They all refer to research with persons 18 or over.

2 Q: What is U.S. Ex. 57,155?

3 A: It is a proposal to us on promotional concepts by McCracken Brooks from November  
4 1993.

5 Q: Did the proposal refer to adolescents?

6 A: No, it didn't.

7 Q: Did Lorillard accept the proposal?

8 A: No.

9 (c) Newport's "peer" appeal

10 Q: Dr. Krugman testified that Lorillard uses the concept of peers to market to teens.  
11 He stated that "the tobacco companies understand the power and influence of peers and  
12 employ it in their advertising and promotion. The tobacco companies know that teenagers  
13 are peer oriented, and they recognize the importance of peers in the initiation of smoking."  
14 Krugman written direct, 85:14-17.) Regarding Lorillard, he stated: "Lorillard makes a  
15 very direct appeal to the peer group." (Id. at 90:11.)

16 Do you use a "peer" appeal to target teenagers?

17 A: No, we don't. All people, not just teenagers, have peers. We use the word "peer" in its  
18 ordinary meaning to refer to people in the same social group. In this case, the peer group  
19 consists of young adult smokers, ages 21-34.

20 Q: When did Lorillard first describe Newport as a "peer brand?"

21 A: As I recall, I coined the description and first used it in the 1994 Brand Plan.

22 Q: What did you mean by that description?

1 A: It was a reflection of Newport's long-time market position as a brand for adults who like  
2 to have fun with friends. We adopted the term because of market research in which adult  
3 smokers told us things like "Newport will appeal to my friends" or "these are people I hang  
4 with" or "I would recommend it to my friends."

5 Q: Referring you again to the 2002 Brand Plan, JD-021072, can you explain to the  
6 Court how you used the "peer" concept?

7 A: REDACTED

8

9

10

11 Q: Is that page reproduced on the next page as JDEM-020183?

1 REDACTED

2 A: Yes, it is.

3 Q: When you said “their lifestyles,” who did you mean?

4 A: I meant just what I said, adult smokers 21-34. They most certainly have their own peers  
5 and their own lifestyles, which involve socializing with those peers. Those are the lifestyles and  
6 the social situations that we portray in our advertising.

7 (d) The consistent nature of Newport’s imagery

8 Q: Has Newport been consistent in its ads?

9 A: Yes. Newport has used the same type of advertising for more than 30 years, with the  
10 same pleasure theme, the same types of scenes and the same color scheme.

1 Q: Dr. Krugman agreed that “Newport has had the same campaign for the Alive With  
2 Pleasure Campaign ... with very similar themes for 30-some years, and that also is a form  
3 of reminder advertising that people can readily associate those colors and that type of  
4 advertising, the picture of the pack and it reminds them, yes, Newport, without having to  
5 think a lot about it ....” (12/15/04 Tr. tr. at 8630.)

6 Do you agree with Dr. Krugman?

7 A: Yes, I do. That is precisely why we have used such consistent advertising.

8 2. Magazine placement

9 Q: I would now like to ask you about your magazine placement. Dr. Krugman  
10 testified: “Specifically, the tobacco companies knowingly reached 12 to 17 year olds with  
11 their magazine advertisements – particularly those for Marlboro, Newport, and Camel.”  
12 (Krugman written direct, 115:21-23.)

13 With respect to Newport, do you agree with Dr. Krugman?

14 A: No.

15 Q: Why not?

16 A: Reaching 12 to 17 year olds has nothing to do with our magazine placement decisions.  
17 Lorillard selects magazines to obtain the greatest reach of adult menthol smokers within its target  
18 demographic for its advertising dollars, while not using magazines with an undue exposure to  
19 underage individuals. To accomplish this goal, we carefully analyze readership and cost  
20 information provided by our advertising agency that indicates the number and percentage of  
21 adult menthol smokers in different age brackets who read each magazine.

22 Q: Earlier, you mentioned the policy regarding magazine placement that was in place  
23 when you joined Lorillard. How did Lorillard interpret that policy?

1 A: The Code limited us to magazines primarily directed to persons 21 and over. In applying  
2 that standard, we considered the type of publication, its editorial content, readership information  
3 to the extent it was available, and the other type of advertising routinely present in the  
4 publication.

5 Q: Earlier you also said that Lorillard changed its magazine placement policy in 2001.  
6 Would you elaborate on the change?

7 A: Yes. As I mentioned before, in that year we implemented an “18% policy,” under which  
8 we refrained from advertising in any magazine measured with more than 18% readership by 12-  
9 17 year-olds. We made that decision after discussing the issue with representatives of state  
10 Attorneys General and articulated it in a letter that our CEO, Martin Orlowsky, sent to Attorney  
11 General Gregoire of Washington.

12 Q: Referring you to JE-022143, is this that letter?

13 A: Yes. It is a letter that Mr. Orlowsky sent to Ms. Gregoire on February 9, 2001.

14 Q: Did you drop any magazines as a result of that policy?

15 A: Yes, we dropped three magazines, *Sports Illustrated* and *Rolling Stone* immediately and  
16 *ESPN: The Magazine* as soon as research showed it exceeded our 18% limit.

17 Q: Did the youth readership of *Sports Illustrated* later fall below that limit?

18 A: Yes, it did.

19 Q: Did you resume advertising in *Sports Illustrated* as a result?

20 A: Not immediately. However, we went to the publisher and asked if they could provide a  
21 restricted edition that would not be distributed to persons under 18. The publisher then offered  
22 us an edition not sent either to public places like schools, libraries doctors’ offices, or

1 newsstands, or to homes where they had information that someone under 21 lived. We felt that  
2 that arrangement minimized exposure to minors even more than the 18% rule.

3 Q: Do any other magazines provide you with selective distribution?

4 A: Yes, *Ebony* and *Jet*. They carry our ads only in selective-distribution editions sent to  
5 subscribers 21 and over. Again, they do not go to public places.

6 Q: How did you apply the 18% rule?

7 A: We applied it to all magazines with youth readership measured by Simmons or MRI. For  
8 other magazines, we looked at the publisher's statement of its positioning, its demographic  
9 target, its subscriber base by age and gender if available, as well as its editorial content and list of  
10 advertisers.

11 Q: Referring you to JD-022695, can you identify that?

12 A: Yes. It is a volume that we maintained with information provided us by magazine  
13 publishers. We used that information to make our placement decisions.

14 Q: Now I would like to turn to your current policy. Dr. Krugman testified that “[i]n  
15 some recently published studies, authors define a ‘youth-oriented’ magazine as one which  
16 had a readership greater than 2 million teenagers age 12 to 17 or one whose readership of  
17 teenagers age 12 to 17 was more than 15[%].” (Krugman written direct, 124:1-3.)

18 Is that the standard now used by Lorillard?

19 A: Essentially, yes. Lorillard will not advertise in magazines having at least 15% or 2  
20 million 12-17 year-old readers.

21 Q: When did that policy go into effect?

22 A: At the beginning of this year.

23 Q: Is that only for magazines measured by Simmons or MRI?

1 A: No. Magazines that are not measured by Simmons or MRI must provide a full  
2 demographic profile showing that they meet the same standard.

3 Q: Did you have to drop any magazines because of the new policy?

4 A: We had to drop only one magazine. That was *People*, which had more than 2 million  
5 youth readers. We dropped it even though its percentage of youth readers was only 8% or 10%,  
6 depending on whether you use MRI or Simmons.

7 Q: What happens if a magazine's youth readership is over the limit and then drops  
8 below it, as happened with *Sports Illustrated*. Will you get back in?

9 A: We haven't done that, and it is unlikely that we will unless the magazine offers a  
10 restricted edition as *Sports Illustrated* did. I don't feel comfortable jumping in and out of a  
11 magazine because of a fluctuation in survey results.

12 Q: Dr. Biglan testified that Lorillard selects magazines to associate Newport with  
13 "themes and topics that are of great interest to adolescents who are concerned about  
14 popularity. ...For example, the content of celebrity magazines helps Lorillard communicate  
15 that the Newport smoker is popular." (Biglan written direct at 218:3-5, 14-15.) He cited  
16 as an example an ad in an August 23, 1999 *People*.

17 Is this a reason why Lorillard advertised in magazines like *People*?

18 A: No. We select magazines on the basis that I mentioned above, the most economical way  
19 of reaching adult menthol smokers in our target demographic, while limiting exposure to minors.  
20 We select from a broad range of magazines in different readership categories in an attempt to  
21 reach more segments of our target demographic.

1                   3.     Point-of-sale advertising

2     Q:     Let's turn to a different form of advertising. Dr. Krugman stated: "The tobacco  
3     companies' current marketing at retail is ubiquitous and reaches many teenagers. ... The  
4     tobacco companies' retail marketing purposefully creates brand image and brand equity  
5     using the same imagery that the tobacco companies previously used for many years in  
6     magazines, on billboards, and on television." (Krugman written direct, 48:19-49:2.) He  
7     also said that this supposed ubiquity was purposeful. (Krugman written direct, 47:20-21.)

8             Do you agree?

9     A:     No.

10    Q:     Why not?

11    A:     I do not consider our retail advertising to be "ubiquitous," and we do not intend it to be.  
12    We place advertising in retail locations that sell cigarettes to let adult consumers know about the  
13    price and availability of Newport and, to a lesser extent, Maverick and Old Gold. By far, the  
14    majority of our retail advertising is limited to our brand name and the price, and lacks the kind of  
15    imagery previously seen on our billboards, which was similar to our magazine ads.

16    Q:     Referring you to U.S. Ex. 17,481 from Dr. Krugman's testimony, can you describe  
17    the Newport sign in this store?

18    A:     Yes. The Newport sign simply says, "Newport pleasure!" and lists the price of a pack of  
19    Newport. This is an example of what I mean about retail advertising being ordinarily limited to  
20    price and brand availability.

21    Q:     Has the amount of money Lorillard spends on point-of-sale advertising increased in  
22    recent years?



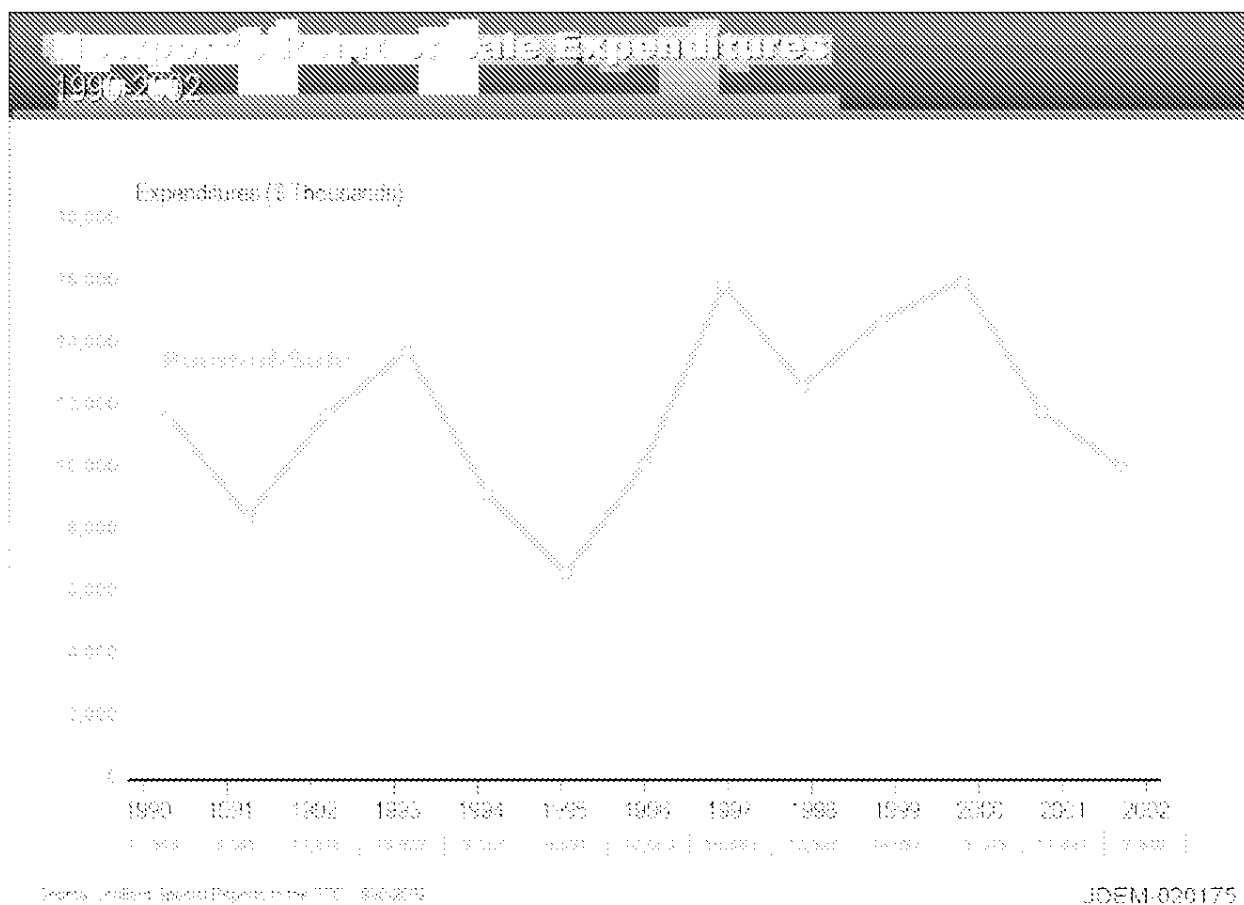
1 A: The amount of money we spend on point-of-sale advertising varies from year to year, but  
2 it has not seen a substantial increase in recent years.

3 Q: Do you report point-of-sale expenditures to the FTC every year?

4 A: Yes, we do.

5 Q: Referring you to JDEM-020175 below, which shows Newport's point-of-sale  
6 expenditures, as reported to the FTC from 1990-2002, can you tell the Court what this  
7 indicates?

8 A: It shows just what I stated, that our expenditures for point-of-sale advertising fluctuate  
9 from year-to-year but have not shown a large increase in recent years.



1 Q: A moment ago you said that you do not consider your point-of-sale advertising  
2 ubiquitous; would you explain why not?

3 A: I just testified that our point-of-sale ads are generally limited to brand name and price. In  
4 addition, we do not have displays or point-of-sale advertising in every store that sells cigarettes.

5 Q: In how many stores that sell cigarettes does Lorillard place point-of-sale  
6 advertising?

7 A: We place point-of-sale advertising in a relatively small portion of the 600,000 stores that  
8 sell cigarettes in this country. Almost all of the stores in which we place point-of-sale  
9 advertising are ones with which we have merchandising or promotional contracts. As of January  
10 of this year we had merchandising (Excel) contracts with only 81,625 stores. We had  
11 promotional (non-Excel) with 31,472. Thus, about 80% of all stores selling cigarettes in this  
12 country do not have a Lorillard advertisement.

13 Q: Do you select the stores in which you place point-of-sale advertising with the goal of  
14 making your POS advertising ubiquitous to teenagers?

15 A: No. We don't research consumers going in and out of stores and do not know how many  
16 teens enter the stores in which we have point-of-display advertising. As I mentioned, they are  
17 stores with merchandising or promotional contracts. We offer those contracts to stores that have  
18 a certain quantity of weekly sales of Newport. The store owner decides whether to accept the  
19 contract.

20 Q: How does your point-of-sale advertising compare to the situation a few years ago?

21 A: Our opportunities for point-of-sale advertising are much more limited today than in the  
22 past.

23 Q: Where in the stores is your point-of-sale advertising displayed?

1 A: That is up to the retailer. These days, it is usually in a confined area.

2 Q: Do you supply items like clocks or neon signs with a Lorillard cigarette brand  
3 name?

4 A: No. We used to, but we don't anymore.

5 Q: Are there Lorillard signs facing outdoors?

6 A: There are, but they are limited to the brand name, price, and maybe a picture of a pack.

7 B. Price Promotions

8 Q: Dr. Chaloupka stated: "Defendants know that teenage smoking is particularly price  
9 sensitive; and Defendants use this knowledge in developing and implementing their price-  
10 related marketing strategies." (Chaloupka written direct, 32:6-8.)

11 Is this true for Lorillard?

12 A: No. During my time at Lorillard, we have never studied underage persons and we have  
13 never used knowledge about minors to make pricing decisions.

14 Q: Does Lorillard believe that minors are more price sensitive than adults?

15 A: No.

16 Q: I would like to ask you about the two Lorillard documents on which Dr. Chaloupka  
17 relied. First, referring you to U.S. Ex. 22,724, would you identify it?

18 A: It is a report entitled, "A Study of the Effect of Pricing Changes in Michigan Two  
19 Months after Tax Increase," by SE Surveys Inc., dated August 1994.

20 Q: Have you seen this document before?

21 A: To my knowledge, I first saw it in connection with my preparation in this case.

22 Q: Have you reviewed it?

23 A: Yes.

1 Q: Did this document involve underage individuals?

2 A: No. It pertained only to individuals 18 and older and didn't break them down by age.

3 Q: The other exhibit is U.S. Ex. 55,569. Would you identify it?

4 A: It is a 1992 memorandum by our research department regarding price sensitivity by age.

5 Q: Dr. Chaloupka testified that this document "shows that Lorillard, based on its

6 internal tracking data, was aware of the greater price sensitivity of younger smokers."

7 (Chaloupka written direct, 112.)

8 Before I ask you if this document shows that Lorillard was aware of the greater

9 price sensitivity of younger smokers, let me ask you: When this document was written,

10 were you the Brand Director for Newport?

11 A: Yes.

12 Q: Did you see this document at or around the time it was written?

13 A: Not that I recall. I believe I first saw it when I was preparing for this testimony.

14 Q: Who were the recipients of this document?

15 A: At the time of this document, they were all individuals in our market research

16 department, not individuals involved in brand marketing.

17 Q: Were the research results shown in this document ever used in the marketing of

18 Newport?

19 A: No.

20 Q: Does this document mention underage individuals?

21 A: No. It relates exclusively to legal age smokers.

22 Q: Now, let me ask you: Does this document indicate that Lorillard was aware of a

23 greater price sensitivity of younger smokers?

1 A: No.

2 Q: Why not?

3 A: This is a report that appears to be about the results of two *experimental* questions that  
4 were asked in our 1991 National Cigarette Tracking Study. I am not aware of these questions  
5 being asked again.

6 Q: Up until that point did you use many price promotions for Newport?

7 A: No, but price promotions were becoming a more important part of our marketing  
8 program.

9 Q: Did you use many price promotions for Newport after that point?

10 A: Yes, but their reach was limited.

11 Q: Why was their reach limited?

12 A: Until 1999, our discounts were limited to coupons, which our sales force physically  
13 placed on the packs and cartons in the stores. That method restricted discounts to only five-to-  
14 ten percent of our sales.

15 Q: What changed in 1999?

16 A: In that year, we started our buy-down program because of rising retail prices and  
17 competitive pricing activity.

18 Q: What is a buy-down program?

19 A: It is a program in which we reimburse the retailer for selling Newport at a certain  
20 discounted price. It enables us to engage in much more widespread discounting than coupons.  
21 We discounted up to 50% of our volume under the program initially, and now nearly 80%.

22 Q: In recent years how has price compared to your other marketing vehicles?

23 A: It has been the main thrust of our marketing activity.

1 Q: Why does Lorillard use price promotions?

2 A: For one reason only, to compete more effectively. Our competitors use price promotions,  
3 and we have to use them to stay competitive.

4 Q: How does the volume of Newport's discounting compare to its competitors?

5 A: The percentage of Newport's volume that is discounted is actually less than that of our  
6 key major competitors, Kool and Marlboro Menthol.

7 Q: Have you researched the effect of your price promotions on different age groups?

8 A: Yes, we have researched adults of different age groups. We have never researched the  
9 effect of price promotions on underage individuals.

10 Q: What have you found about the impact of price on different age groups of adults?

11 A: We have found that price is a more important factor for older smokers. For example,  
12 purchasers of discount cigarettes are disproportionately older. This has been well-known for a  
13 long time, and our 2002 Market Composition study confirmed that it is still the case.

14 Q: Referring you to JD-022391, what is that?

15 A: That is a report on our 2002 Market Composition Study.

16 Q: What did it indicate about the impact of price on different age groups?

17 A: The study found that a greater percentage of older smokers choose discount brands than  
18 younger smokers. A table on page 2125 shows that only 12% of smokers of discount brands  
19 were 21-34 compared to 34% of smokers of full price brands. On the other hand, 50% of  
20 discount smokers were 50 and over, compared to only 30% of full-price smokers. In the middle,  
21 about the same percentage of smokers of the two classes were 35-49.

22 Q: Referring you to JDEM-020176, which is copied on the next page, does that show  
23 the results to which you just referred?

## Demographic Profile by Price Class of Regular Brand

Age	Total Resp. (2508)	Full Price (1899)	Discount (562)
21-34	28%	34%	12%
21-24	10%	12%	3%
25-34	18%	22%	9%
35-49	35%	36%	38%
50 or older	37%	30%	50%
Mean Age	44.8	42.3	49.5

1 Source: JDEMI 020176

2 A: Yes.

3 Q: Have you researched coupon use among different age groups of Newport smokers?

4 A: Yes, we have. We track coupon users through our direct marketing database, in which  
5 we have the ages of all participants.

6 Q: What have you found?

7 A: We found that older adults use Newport coupons to a much greater extent than younger  
8 adults.

1 C. Direct Marketing

2 Q: You just referred to your direct marketing program. For how long have you had it?

3 A: We began using direct mail on a very limited basis in the early 1990s. It became a major  
4 focus for us with the creation of our Database Marketing Department in 2001.

5 Q: Why did it become a major focus for you?

6 A: It became a major focus because direct marketing allows us to communicate directly with  
7 adult smokers.

8 Q: Dr. Dolan testified, based on a stipulation between Lorillard and the government,  
9 that in 2002 Lorillard sent 9 million mailings to 3.2 million people whose ages you did not  
10 “really know for sure.” (Dolan written direct, 148:18-149:4.)

11 Have you reviewed the stipulation? (U.S. Ex. 90,002.)

12 A: Yes.

13 Q: Earlier, you said that you limit direct marketing to people who are 21 and over.  
14 What steps do you take to limit this marketing tool so that it is not directed at underage  
15 individuals?

16 A: Any person placed on our database, called “Epiphany,” must sign a certification that he  
17 or she is at least 21, is a smoker, and wishes to receive mail from us. As with other aspects of  
18 marketing, we use a limit of 21 to provide a buffer from the legal age even though the MSA  
19 allows us to send premium items to any legal-age smoker. Also, since the MSA, we require age-  
20 verification before sending premium items. Specifically, we require a government-issued ID or  
21 independent age-verification by a service called “Aristotle.”

22 Q: What is Aristotle?



1 A: It is the largest and most well-known service that verifies ages. It does so by checking  
2 the names against public records.

3 Q: Do you send mailings to people whose age you don't really know for sure, as Dr.  
4 Dolan said?

5 A: I don't know what "don't really know for sure" means, but I do know we have tried to  
6 weed out underage individuals.

7 Q: Please explain how you did that.

8 A: In 2002, we tried to match all 4.8 million qualified individuals in our database against the  
9 under-21-year-olds in two public databases (Donnelly and KnowledgeBase) and identified 2,570,  
10 or less than 1/10<sup>th</sup> of 1%, as potentially under 21. We wrote to all 2,570 and asked for a  
11 Government ID to stay in the program. Those who didn't send one were placed on a  
12 "Suppression" database so that they would not receive mailings. Since then, all new participants  
13 are run through the two sources, and the same procedure is followed.

14 Q: Have any underage individuals tried to get onto your database?

15 A: Yes, they have.

16 Q: Have any of them successfully gotten onto your database?

17 A: Yes.

18 Q: What happens if you learn that a participant is under 21?

19 A: We remove them from "Epiphany" and place them on "Suppression."

20 Q: How do you learn that someone on your database is underage?

21 A: I mentioned that we run checks periodically. In addition, occasionally we receive calls  
22 from parents. Also, sometimes an individual who is under the age of 21 and who has been on the  
23 database will send in an ID when he turns 21 so that he can receive premium items. If that

1 happens, we know the person has obtained access to the program improperly, and we put his  
2 name on "Suppression."

3 Q: What if someone no longer wants to be part of the program?

4 A: Every mailing contains a toll-free number for people to call to request removal. If they  
5 do, we place them on "Suppression."

6 Q: Do you track the ages of customers who redeem premium items from your direct  
7 mail program?

8 A: Yes. As we do with coupons, we track customers who redeem premium items.

9 Q: Do they tend to be older or younger?

10 A: They tend to be older adults.

11 Q: Referring you to JD-022474, p. 1232, what does that indicate about the ages of  
12 people who redeem premium items?

13 A: REDACTED  
14  
15

16 Q: Is it true that all of your mailings are associated with the Newport brand?

17 A: Yes.

18 Q: Why is that?

19 A: The reason is that Newport is the only Lorillard brand that has demonstrated the ability to  
20 maintain franchise smokers and attract competitive smokers.

21 Q: Let me ask you about U.S. Ex. 22,208, a 1990 document. The government  
22 introduced this document and says that it shows that "one of the 'Uses of Database

1 Marketing' was 'Overcoming the loss of some media – print media with high under 21  
2 readership.'" (U.S. Findings of Fact, Paragraph 3768.)

3 Would you describe this document?

4 A: This was a presentation to us in 1990 by two outside consultants, who were trying to  
5 encourage us to use database marketing.

6 Q: Were you part of the presentation?

7 A: I don't recall being there, and I didn't see the document at the time.

8 Q: Did Lorillard adopt this proposal?

9 A: Not to my knowledge. We had a few mailings in the 1990's, but we didn't have a direct  
10 marketing program like we have today.

11 Q: Based on your experience at Lorillard, what was the meaning of the comment  
12 quoted by the government, 'Overcoming the loss of some media – print media with high  
13 under 21 readership.'"

14 A: These presenters were apparently anticipating that we would be withdrawing from some  
15 of the magazines we were using at the time and would need a vehicle to replace them. On the  
16 same page as this comment, they mention that one advantage of database marketing is that it  
17 would go directly and exclusively to smokers with no wasted circulation and that it would be  
18 unseen by nonsmokers. That is, in fact, one of the advantages of our direct marketing program.

19 D. Sampling

20 Q: Dr. Krugman testified: "Cigarette product sampling ... [has] regularly reached  
21 teenagers." (Krugman written direct, 107:4-5.)

22 Is this true for Lorillard?

1 A: No. In fact, we haven't provided any free samples for several years. With the increasing  
2 importance of price competition, we found that our sampling programs were inefficient ways to  
3 get people to try our products.

4 Q: When Lorillard was sampling, were there any age restrictions?

5 A: Yes. Sampling under the Code was limited to adult smokers 21 years-old and older, and,  
6 in recent years, to adults facilities such as bars that were restricted to persons aged 21 and over;  
7 even then, we verified the ages of all recipients with a Government ID.

8 Q: How did you try to make sure that the people giving out the samples followed the  
9 rules?

10 A: We trained the samplers in the rules they were to follow, and we included those rules in  
11 our contracts with them. We also conducted on-site checking for compliance.

12 E. Sponsorships

13 Q: Dr. Krugman testified: "Tobacco companies rely on sponsorships to develop  
14 customer relationships and foster positive brand images." (Krugman Written Direct at  
15 108:4-5).

16 Does Lorillard have any brand sponsorships?

17 A: No. Although we are allowed one sponsorship under the MSA, Lorillard does not have  
18 any and has not had one for nearly a decade.

19 Q: Has Newport ever had any sponsorships?

20 A: Yes. From 1990-96, Newport sponsored a race car in the minor league Toyota Atlantic  
21 and Indy Lights leagues.

1 F. Product Placement

2 Q: Dr. Krugman testified that “the tobacco companies used product placement in  
3 movies to promote their cigarette brands.” (Krugman written direct, 114:8-9.)

4 Is that true for Lorillard?

5 A: No.

6 Q: Why not?

7 A: We are barred by the MSA from paying for product placement. Not only that, but for as  
8 long as I have been at Lorillard, we have denied permission to use our brands when asked and  
9 strenuously objected when we learn that someone used them without asking.

10 Q: Referring you to JD-020619, JD-020632, JD-022903, JD-020633, JD-020634,  
11 JD-020635, JE-025842, JE-025843, JE-025838, JE-025837, JE-025847 and JD-022606,  
12 would you identify them?

13 A: They are examples of correspondence regarding the actual or requested use of our  
14 cigarette brands in entertainment vehicles since I have been with Lorillard.

15 Q: Please describe those instances.

16 A: On November 12, 1984, we denied a request to use our cigarettes in Twentieth Century  
17 Fox movies. More recently, we denied requests in 1996 to supply True cigarettes in the movie  
18 “Myth America,” in 1988 to use Lorillard products in films produced by Obit Productions and  
19 Sweetheart Productions, in 1999 to use the phrase “Alive with Pleasure” in a production called  
20 “Susanna,” and in 2001 to use Newport in the pilot for the TV series “Monk.”

21 In the case of “Monk,” we later learned that the producers used Newport in a series  
22 episode anyway. Our CEO, Mr. Orlowsky, wrote Susan Lyne, president of ABC Entertainment,  
23 on November 4, 2002 in protest. He asked that “future references to our products do not make it

1 to air” and that the reference to Newport be deleted from the episode in question.  
2 Unfortunately, an ABC Entertainment lawyer wrote back denying the request.

3 A similar unauthorized use of Newport occurred on the series “Friends.” On May 3,  
4 2001, Mr. Orlowsky wrote Jeff Zucker, president of NBC Entertainment, that he was “quite  
5 upset that your producers would allow such a blatant portrayal of our products to be broadcast,  
6 period.” He pointed out: “In 1998, we voluntarily agreed to refrain from product placement in  
7 movies and television, a practice we already had abandoned years ago.” He also asked that the  
8 references to Newport Lights be purged from future airings of the episode. On June 4, 2001,  
9 only a month later, Mr. Orlowsky made another request of Mr. Zucker to remove a Lorillard  
10 cigarette reference from an NBC program, this time in the series “Frasier.”

11 Mr. Orlowsky has sent similar letters to the president of CBS Entertainment objecting to  
12 the use of Newport in the series “Big Brother 2” and to the CEO of Warner Brothers  
13 complaining about the portrayal of Newport in the film *City by the Sea*.

14 Q: Is there anything you can do to prevent the use of your products in entertainment  
15 vehicles?

16 A: Unfortunately, no. But we will continue to deny permission to producers who ask us and  
17 to protest if they use our products without permission.

18 G. Market Research

19 Q: Dr. Biglan stated: “Lorillard monitored cigarette smoking among teenagers long  
20 after the industry claimed not to be marketing to teenagers. It analyzed the ages at which  
21 teenagers started smoking Newport ....” (Biglan written direct, 209:14-17.)

22 Is this true?

1 A: It is untrue for as long as I have been at Lorillard. We have never monitored cigarette  
2 smoking among teenagers, except that until 1999 we included 18 and 19 year old smokers in  
3 some of our studies.

4 Q: Based on your experience at Lorillard, did the company monitor cigarette smoking  
5 among teenagers before you arrived in 1981?

6 A: No, it didn't, except for 18 to 19 year-olds in some studies.

7 1. Documents Relied Upon By The Government

8 Q: I would like to ask you about the three documents Dr. Biglan cites in support of his  
9 allegation, U.S. Ex. 20,065, U.S. Ex. 55,927, and U.S. Ex. 22,357.

10 Have you reviewed them?

11 A: Yes, I have.

12 Q: I will ask you about the individual documents in a moment. But first, taken as a  
13 group and based on your experience at Lorillard, do they constitute monitoring of cigarette  
14 smoking among teenagers?

15 A: No, they don't.

16 Q: Why not?

17 A: Three documents during a 30-year marketing campaign couldn't possibly constitute  
18 monitoring. Monitoring is tracking with the same type of research over a period of time. It is  
19 what we regularly do with adult smokers. We don't do it with adolescents.

20 Q: Do any of these documents contain sufficient information about teenage smokers to  
21 support rational business decisions?

22 A: No, they don't.